IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1206 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHIMABHAI TLASHIBHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR TRILOK PATEL FOR MR JITENDRA M PATEL for Petitioner,
MR RC KODEKAR AGP for Respondent NO.1 State,
SERVED BY RPAD - (R) for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/04/2007

ORAL JUDGMENT

1. Heard Mr.Trilok Patel under authority of Mr.Jitendra M.Patel, learned counsel for the petitioner and Mr.R.C.

Kodekar, learned Assistant Government Pleader for State.

2. Short facts necessary for disposal of the present petition are that in the year 1966, the petitioner received 57 Acres and 10 Gunthas land from his father under alleged partition. On 13/6/1971, the petitioner again received 8 Acres and 23 Gunthas from his father. In the year 1971, the total area of the petitioner's holding was 65 Acres and 33 Gunthas. On 1/4/1976, the petitioner was required to file his Return / Form under the provisions of Gujarat Urban Lands Ceiling Act, 1960, the petitioner accordingly filed Return.

3. In the year 1977, the Mamlatdar initiated an inquiry wherein, the petitioner submitted that his family consisted of his wife, three daughters and one minor son. After hearing the parties, the learned Mamlatdar held that the petitioner would be entitled to one unit and he declared the rest of the land as surplus. The matter came up to the High Court and was ultimately remanded by this Court while passing order dtd. 12/11/1993 in Special Civil Application No.6460 of 1985 with a direction that the Mamlatdar and Agricultural Lands Tribunal (ALT) should restore Ceiling Case No.9 of 1977 and shall decide the same afresh.

4. After remand made by this Court, the petitioner again submitted his matter before the Mamlatdar-cum-ALT and started asserting that he had one wife, three daughters and two sons and under the circumstances so also in accordance with sec.6(3)(B) of the Gujarat Land Ceiling Act, he would be entitled to one unit and 1/5 unit for each person, who are beyond five in number. He accordingly claimed 1.2/5 unit. The Mamlatdar accepted the submissions and granted two units, 1.2/5 unit and held that any land beyond 63 units would be in excess of ceiling limit.

5. The Dy.Collector took up the matter in suo-motu revision and held that the petitioner would be entitled to additional 1/5 unit in addition to his own entitlement. The order was challenged before the Gujarat Revenue Tribunal but the Gujarat Revenue Tribunal held that the petitioner would be entitled to additional 1/5 unit only which would mean that he would be entitled to 45 Acres and 9 Acres of land, total admeasuring 54 Acres. The petitioner is now before this Court.

6. Mr.Patel, learned counsel for the petitioner submits that from Annexure-F, an application made to the Judicial Magistrate (First Class) in Case No.54 of 1994 it would

clearly appear that the petitioner's family consisted of 7 members. He also referred to Annexure-G, a certificate issued by Talati-cum-Secretary of Bhadla Gram Panchayat.

7. It is to be seen that the Tahesildar has passed order on 10/1/1994 and the petitioner made an application on 22/2/1994 to the Judicial Magistrate (First Class) for recording date of birth-date of his youngest son namely Merabhai. The application was granted and thereafter, the Talati-cum-Secretary made an entry on 8/3/1994. The application dtd.22/2/1994 and the entry dtd.8/3/1994 obviously were made after the order was passed by the Mamlatdar. Such application and entry would not bind the State Government, because the State was never a party to such proceedings.

8. It is also to be seen that in the year 1977, the petitioner had stated before the Mamlatdar that he had a wife, three minor daughters and a minor son only. If this was the statement of the petitioner in 1977, then, it would not be possible for anybody to hold that on 1/4/1976 or before that, the petitioner had a wife, three minor daughters and two minor sons. One can ordinarily forget very many things in the life, but it is unheard of that a

father would forget that how many children he has. If he had a wife, three children and two minor sons prior to 1/4/1976, then nothing prevented the petitioner from disclosing the fact before the authorities and claiming 1/5 additional unit for each additional member beyond 5 in number. If in the year 1977 the petitioner did not submit to the authorities that he had two minor sons, then, any statement made by him subsequent thereto would not inspire confidence and help his case and cause. From the judgment of the High Court also it would not appear that the petitioner submitted before the High Court that he had two minor sons on 1/4/1976. If this was the state of affairs upto 1993, then, the petitioner's submission that his family consisted of his own-self, his wife, three minor daughters and two minor sons would be a wrong statement.

9. It was then submitted that as the petitioner had repartitioned the property in his own family i.e. amongst his father, his own-self and his brother who was born in the year 1968, the land which has gone to his brother's share is to be excluded from the holding of the petitioner.

10. This submission made by the learned counsel for the petitioner runs contrary to law. A joint family property

can be partitioned amongst co-parceners who are available on the date of the partition. Once partition is effected and joint family comes to an end, then, there can be no reunion unless it is shown that either by positive acts the family reunited. Prior to the birth of the younger brother of the petitioner, the partition had already taken effect and if in the year 1966 the petitioner became absolute owner of the property under partition then, any birth in the family would not divest him of the property which he has already received in the partition. The theory of partition after 1968 would also not help and assist the case and cause of the petitioner.

11. The Gujarat Revenue Tribunal in the opinion of this Court was absolutely justified in holding that the petitioner would be entitled to one unit for five members and additional 1/5 unit for the 6th member of the family.

12. I find no reason to interfere. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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